

APPLICATION FOR NOMINATION TO THE
FLORIDA SUPREME COURT



JOSHUA AARON MIZE

APRIL 13, 2023

APPLICATION FOR NOMINATION TO THE FLORIDA SUPREME COURT

Instructions: Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.

Full Name: Joshua Aaron Mize

Social Security No.: [REDACTED]

Florida Bar No.: 86163

Date Admitted to Practice in Florida: 10/5/2010

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

District Judge
Florida Sixth District Court of Appeal
811 East Main Street
Lakeland, FL 33801
863-274-9754

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number), and your preferred email address.

I have resided at [REDACTED] since November 28, 2020.

I have lived in Florida for the past 27 years, except for the period of July 2015 through February 16, 2018 when I lived in Virginia.

My cell phone number is [REDACTED]. My email address is [REDACTED].

3. State your birthdate and place of birth. [REDACTED].
4. Are you a registered voter in Florida (Y/N)? Yes
5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

See Exhibit A hereto. I have never been suspended or resigned from any bar or court. I have not had a lapse in membership in any bar or court to which I have been admitted. As set forth in Exhibit A hereto, my bar admissions in Virginia, West Virginia, Texas, Colorado and the District of Columbia are each currently on a non-active status. I changed my status in these

jurisdictions after I became a judge because I no longer have a need to maintain an active status in these jurisdictions.

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias. No.

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

<u>School</u>	<u>Dates of Attendance</u>	<u>Degree Received</u>	<u>Graduation Date</u>	<u>Class Standing</u>	<u>GPA</u>
University of Florida College of Law	Aug. 2007 - May 2010	J.D., <i>magna cum laude</i>	5/14/2010	5/349	3.82
University of Florida	Aug. 2003 - May 2007	B.A., <i>cum laude</i>	5/5/2007	Not Available	3.53
University of Florida	Aug. 2003 - May 2007	B.S.B.A.	5/5/2007	Not Available	3.53

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

President, UF Federalist Society, Fall 2008 – Spring 2010

Grade-on Member, *Florida Law Review*

Articles Editor, Spring 2009

Notes & Comments Editor, Fall 2009 – Spring 2010

Order of the Coif, University of Florida College of Law Chapter, Inducted Spring 2010

Board Member, Law College Council, Spring 2008 – Spring 2010

Member, Law School Republicans, 2007 – 2010

Member, College Republicans, 2003 – 2007

Member, Golden Key International Honor Society, Inducted Fall 2006

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

<u>Title</u>	<u>Employer</u>	<u>Address</u>	<u>Dates</u>
District Judge	Florida Sixth District Court of Appeal	811 E. Main St. Lakeland, FL 33801	1/1/2023 – Present
Circuit Judge	Ninth Circuit Court of Florida	425 N. Orange Ave. Orlando, FL 32801	2/22/2021 – 12/31/2022
Owner	Mize Law, PLLC	941 W. Morse Blvd. Suite 100 Winter Park, FL 32789	02/16/2018 – 2/7/2021
Associate Attorney	Morris, Manning & Martin, LLP	1401 I Street N.W. Suite 600 Washington, D.C. 20005	11/30/2015 – 02/16/2018
Associate Attorney	Akerman LLP	420 South Orange Ave. Suite 1200 Orlando, FL 32801	04/16/2012 – 11/25/2015
Associate Attorney	Bush Ross, P.A.	1801 N. Highland Ave. Tampa, FL 33602	10/05/2010 – 04/13/2012
Summer Associate	Bush Ross, P.A.	1801 N. Highland Ave. Tampa, FL 33602	Summer 2009

10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

I am currently a District Judge on the Florida Sixth District Court of Appeal. In that role, I hear all manner of appeals and original proceedings that are filed in the District Court, including criminal, civil and family appeals, as well as petitions for extraordinary writs, such as petitions for writ of certiorari, writ of habeas corpus, writ of mandamus and writ of prohibition.

Prior to my appointment to the District Court, I served as a Circuit Judge on the Ninth Circuit Court of Florida in the Domestic Relations Division from February 22, 2021 through December 31, 2022. In that role, I presided over cases related to marriage, children, and families, including but not limited to dissolution of marriage cases, paternity cases, adoption cases, and temporary custody proceedings.

As a Circuit Judge, I presided over more than 40 family law trials, as well as countless evidentiary hearings. The proceedings over which I presided involved complex issues such as disputes involving The Hague Convention, issues of foreign law and the effect of foreign legal proceedings and foreign administrative actions in the State of Florida, medical conditions and disabilities, and discovery disputes concerning foreign assets and entities, complex business arrangements, cryptocurrency, trusts, and construction projects. I also conducted interstate family law proceedings with courts in California, Georgia, New Jersey and South Dakota.

While on the Circuit Court, in addition to my service in the Domestic Relations Division, I periodically presided over proceedings in the Circuit Civil, Circuit Criminal and County Criminal Divisions. In the Circuit Civil Division, I presided over hearings on discovery motions, motions to dismiss, a motion for contempt, and a motion for summary judgment. In the County Criminal Division, I presided over hearings on motions to suppress evidence, motions in limine, plea hearings, and other motion hearings. I also conducted Initial Appearances at the Orange County Booking & Release Center as well as the Juvenile Justice Center. I also reviewed applications for warrants from law enforcement agencies and ruled upon the granting or denial of such applications.

Lastly, I presided over a three-day criminal jury trial in the Circuit Criminal Division. The defendant was charged with Aggravated Assault with a Deadly Weapon, along with the lesser included offenses of Assault and Improper Exhibition of a Firearm.

Before I became a judge, my practice consisted of commercial, intellectual property, consumer protection and other civil litigation for businesses and individuals. I conducted numerous evidentiary proceedings in federal and state courts as first chair. My clients included individuals, small businesses and large companies seeking representation for contract disputes, tort claims, intellectual property disputes, consumer protection matters and other civil litigation matters. In the course of my practice, I litigated complex commercial cases involving highly technical subject matter. I also led multiple large electronic discovery projects requiring supervision of attorneys, paralegals, legal secretaries and outside vendors. The significant cases I litigated as an attorney included:

- Served as lead counsel for national corporations and individual consumers in numerous lawsuits brought under federal and state consumer protection laws, including the Telephone Consumer Protection Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act and the Florida Consumer Collection Practices Act
- Represented individual in appeal of adverse judgment in breach of contract action involving an international cross-border sale of artwork valued in excess of \$4 million
- Represented national retailer defending appeal of judgment dismissing with prejudice claims against retailer for false advertising and fraud
- Represented multinational medical device manufacturer in constitutional challenge to bond validation proceeding initiated in Collier County, Florida
- Represented developer in dispute with general contractor regarding \$25 million construction contract for multifamily housing financed by HUD-insured loan

- Represented international developer of multifamily housing in dispute with mezzanine lender involving eleven multifamily properties valued at more than \$250 million
- Represented regional transportation company in trademark infringement action
- Represented corporate landowner in defense of breach of lease action with alleged damages in excess of \$20 million
- Represented software company in defense of complex litigation involving business torts and claims for copyright infringement based on misappropriation of software code
- Represented American Automobile Association in trademark infringement action
- Represented large for-profit university in defense of breach of contract action brought by former provider of student housing
- Represented national retailer in racial discrimination action under 42 U.S.C. § 1981
- Represented provider of election law compliance services in action brought by competitor asserting claims for business defamation and tortious interference
- Represented NASA contractor in defense of parallel federal and state actions against competing NASA contractor involving claims for copyright infringement and misappropriation of trade secrets based on alleged misappropriation of software code
- Represented international battery manufacturer in trademark infringement action against major national retail chain and competing manufacturer
- Represented national insurance company in defense of suit involving complex fraud and business tort claims brought by former principal of regional insurance agency
- Represented European manufacturer of packaged goods in defense of breach of contract action brought by alleged former sales representative for the United States
- Represented national social media services company in trademark infringement action
- Represented manufacturer of components of vintage motorcycles in breach of contract action against former company principal

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

	Court		Area of Practice	
Federal Appellate	_____ %	Civil	<u>100</u> _____ %	
Federal Trial	<u>50</u> _____ %	Criminal	_____ %	
Federal Other	_____ %	Family	_____ %	
State Appellate	<u>2</u> _____ %	Probate	_____ %	
State Trial	<u>48</u> _____ %	Other	_____ %	
State Administrative	_____ %			
State Other	_____ %			

TOTAL 100 %

TOTAL 100 %

The foregoing percentages are based on the last five years that I practiced law, which was February 2016 – February 2021.

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation: N/A

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

Jury?	<u>1</u>	Non-jury?	<u>1</u>
Arbitration?	<u> </u>	Administrative Bodies?	<u> </u>
Appellate?	<u>1</u>		

These are cases that I litigated as an attorney prior to becoming a judge. The jury trial was a three-day jury trial in federal court. I personally conducted the entirety of the trial. The non-jury trial was a three-day trial in Florida state court. I was second chair for two days of the three-day bench trial, during which I examined witnesses. The appeal was an appeal from a Florida county court to a circuit court. I personally handled the entirety of the appeal. I also handled an appeal in the U.S. Court of Appeals for the Second Circuit, including drafting the Appellant's Initial Brief, but the case settled before the Court issued a decision. I have also conducted many other non-trial evidentiary proceedings as first chair.

As stated above, as a Circuit Judge, I presided over more than 40 non-jury trials and one jury trial.

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

Richard Green (Fine Paintings) v. Mary Alice McClendon, Case No. 10-4845

Court: U.S. Court of Appeals for the Second Circuit

Co-counsel: Carter Andersen, [REDACTED]

Opposing counsel: John R. Cahill, [REDACTED]

Description: I was responsible for all aspects of the appeal, including examination of the entire trial court record and drafting of the Appellant's Initial Brief. I examined the appellate court's jurisdiction, the trial court's subject matter jurisdiction, the applicable standards of review and the substantive legal issues. Ultimately, the case settled before the Court ruled on the appeal. In addition to this case, I have handled an appeal from a Florida county court to a circuit court.

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain full.

No.

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

Erik Larsen v. AR Resources, Inc.

Case No. 4:19-cv-00041-RBS-DEM

Court: U.S. District Court for the Eastern District of Virginia

Opposing Counsel: Randall Lenhart, [REDACTED]

Kevin Cornish, [REDACTED]

Brevard Land Materials, Inc. v. Boruch-David, LLC

Case No. 05-2013-CA-025901

Court: Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida

Co-counsel: Todd Pittenger, [REDACTED]

Opposing counsel: Charles M. Greene, [REDACTED]

Richard Reinhart, [REDACTED]

Truthinadvertisingenforcers.com (Gerald Collette) v. Zale Delaware, Inc.

Case No. 2017-AP-000029

Court: Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida

Opposing counsel: N/A. Appellant was *pro se*.

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

Jacqueline K. Armour v. Synchrony Bank

Case No. 20-SC-3419

Court: County Court of the Fifth Judicial Circuit in and for Marion County, Florida

Opposing counsel: Francis Rodriguez, [REDACTED]

Rosa Tierney v. Credit Corp. Solutions, Inc.

Case No. 0:20-cv-62366-KMM

Court: U.S. District Court for the Southern District of Florida

Opposing counsel: Seth P. Robert, [REDACTED]

Brenda A. Ramos v. Capital One, N.A. & Kohl's, Inc.

Case No. 05-2020-SC-038780

Court: County Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida

Opposing counsel: Ellen T. Matthews, [REDACTED]

Michael Smith, [REDACTED]

Kozette Malay v. Virtuoso Sourcing Group, LLC

Case No. 2:20-CV-00635

Court: U.S. District Court for the Southern District of West Virginia

Opposing counsel: Nicholas P. Mooney, [REDACTED]

Paola Carrion v. BMW Financial Services NA, LLC

Case No. 50-2020-SC-015905-XXXX-NB

Court: County Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida

Opposing counsel: Ryan L. DiClemente, [REDACTED]

Haley Dulanski v. Credit One Bank, N.A.

Case No. 2019SC-002225-0000-WH

Court: County Court of the Tenth Judicial Circuit in and for Polk County, Florida

Opposing counsel: Alexandra de Alejo, [REDACTED]

- 18.** During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

As a District Judge, I typically participate in oral arguments two days per month.

During my service as a Circuit Judge from February 22, 2021 through December 31, 2022, I typically presided in Court Monday through Friday each week.

During my last five years as an attorney, I appeared in Court approximately once per month on average. I did not appear at any administrative hearings.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

N/A

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

My practice did not involve personal injury, workers' compensation or professional malpractice.

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

1. *Erik Larsen v. AR Resources, Inc.*

Case No. 4:19-cv-00041-RBS-DEM

Court: U.S. District Court for the Eastern District of Virginia, Norfolk Division

Judge: Hon. Rebecca Beach Smith

Client: Erik Larsen

Nature of Participation: Counsel for Erik Larsen

Dates of Case: April 2019 – June 2020

Opposing Counsel: Randall Lenhart, [REDACTED]
Kevin Cornish, [REDACTED]

Significance: This case is significant because it shows my ability to adeptly handle all phases of litigation. I was the sole attorney for the Plaintiff from the filing of the Complaint through the three-day jury trial and post-trial motions. I prepared all pleadings, conducted all written discovery, deposed all witnesses, prepared the successful response to the Defendant's Motion for Summary Judgment, performed all pretrial preparation, drafted all proposed jury instructions, conducted the three-day jury trial and prepared responses to the Defendant's post-trial motions. The jury returned a verdict for the Plaintiff. I prepared a Motion for Attorneys' Fees, which resulted in the Court entering a judgment for attorneys' fees in my favor. The Defendant filed a post-trial Motion for Judgment as a Matter of Law and a Request for New Trial, and I drafted the Response. The District Judge denied the Defendant's motion.

2. *Housing and Residence Life, LLC v. Universal Technical Institute of Phoenix, Inc.*

Case No. 6:12-cv-00874

Court: U.S. District Court for the Middle District of Florida, Orlando Division

Judge: Hon. John Antoon, II

Client: Universal Technical Institute, Inc. (“UTI”)

Nature of Participation: Co-counsel for UTI

Dates of Case: June 2012 – September 2013

Co-counsel: Todd Pittenger, [REDACTED]

Opposing Counsel: David S. Cohen, [REDACTED]
Shawn L. Demers, [REDACTED]

Significance: This case is significant for the excellent results obtained, the technical nature of the discovery, and the sensitive matters at issue. This case shows my legal acumen, my ability to handle complex discovery, and my judgment in handling matters of a sensitive nature.

UTI is a nationwide provider of technical education training that operates eleven campuses, including one in Orlando. UTI engaged Housing & Residence Life, LLC (“HRL”) as a provider of dormitory style housing for UTI’s Orlando campus. UTI subsequently engaged a separate provider of apartment style housing. UTI also terminated the agreement with HRL due to HRL’s failure to maintain the dormitory style housing in a safe and satisfactory condition. HRL brought suit against UTI for breach of the parties’ contract. I conducted discovery concerning lost profits and other damages, construction defects, health and safety hazards, sensitive issues of criminal activity, and complex statistical survey evidence relating to student satisfaction levels. I deposed the Plaintiff’s expert witness and both of the Plaintiff’s principles. I ultimately drafted a successful Motion to Dismiss, a Daubert Motion, a Motion in Limine, and the Motion for Summary Judgment. After the Court entered an Order granting the Motion for Summary Judgment in part and denying the vast majority of the Plaintiff’s alleged damages, the case settled shortly before the start of trial. The Court’s Order granting the Motion for Summary Judgment in part can be found at *Hous. & Residence Life, LLC v. Universal Tech. Inst. of Phoenix, Inc.*, No. 6:12-CV-874-ORL-28, 2013 WL 4506395 (M.D. Fla. Aug. 23, 2013).

3. *Brevard Land Materials, Inc. v. Boruch-David, LLC*

Case No. 05-2013-CA-025901

Court: Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida

Judge: Hon. Lisa Davidson

Client: Boruch-David, LLC (“Boruch-David”)

Nature of Participation: Co-counsel for Boruch-David

Dates of Case: I was co-counsel for Boruch-David from July 2013 through Nov. 2015

Co-counsel: Todd Pittenger, [REDACTED]
Kelly Garcia, [REDACTED]

Opposing Counsel: Charles M. Greene, [REDACTED]
Richard Reinhart, [REDACTED]

Significance: This was one of the most unique and complex cases in which I was involved as an attorney. It was one of multiple lawsuits in a dispute that was litigated in both federal and state courts with multiple appeals taken. I was co-counsel for Boruch-David from July 2013 through November 2015.

In April 2013, Brevard Land Materials, Inc. (“Brevard Land”) filed a Complaint against Boruch-David alleging that Boruch-David breached a Borrow Pit Lease/Operating Agreement that gave Brevard Land the right to excavate fill dirt from a 150-acre Borrow Pit owned by Boruch-David. The agreement was executed in 2002. Brevard Land alleged that in early 2013, Boruch-David barred Brevard Land from the Borrow Pit despite the fact that Brevard Land had not yet excavated the total amount of dirt that Brevard Land was entitled to excavate from the pit. Boruch-David denied the substantive allegations in Brevard Land’s Complaint.

In addition to denying the substantive allegations made by Brevard Land, Boruch-David also asserted that the purported owner of Brevard Land, Donovan Davis, was actually no longer the owner of Brevard Land and that, therefore, he did not have the right to direct Brevard Land to bring claims against Boruch-David. Specifically, in 2009, Donovan Davis had previously been a defendant in a civil fraud action brought against him by the Commodity Futures Trading Commission in the Middle District of Florida (Case No. 6:09-cv-00508). The civil fraud action related to a foreign currency trading firm called Capital Blu Management, LLC, of which Donovan Davis was the manager and owner. In that action, the MDFL entered a preliminary injunction against Mr. Davis creating a receivership estate consisting of essentially all property of Mr. Davis. The receivership estate was intended to repay the victims of Mr. Davis’ fraud. Mr. Davis failed to disclose the existence of Brevard Land to the receiver. As a result, the receiver took no action with respect to Brevard Land. The receiver was discharged and the receivership estate was closed in 2010.

In *Brevard Land v. Boruch-David*, Boruch-David asserted that because all property of Donovan Davis had been placed into a receivership estate in the Middle District of Florida and had never been released from the receivership estate, the entity Brevard Land remained in the custody of the U.S. District Court for the Middle District of Florida. As a result, Mr. Davis did not have authority to direct the actions of Brevard Land and, specifically, did not have authority to direct Brevard Land to bring legal claims against Boruch-David. Mr. Davis disputed that Brevard Land was in the custody of the federal court. Judge Lisa Davidson ultimately bifurcated this issue and conducted a three-day bench trial solely on this issue. I acted as second chair for two days of the trial, including examining witnesses. After the trial, Judge Davidson ruled in favor of Boruch-David and found that Brevard Land remained in the custody of the federal court. The ruling was upheld by the Fifth District Court of Appeal. I left Akerman in November 2015 and my involvement in the case ended at that time. Subsequently, permission was requested from the Middle District of Florida in order to assert claims on behalf of Brevard Land and the litigation continued.

4. Cynthia J. Selton, et al. v. U.S. Bank Trust National Association, S.D., et al.

Case No. 6:14-cv-01278-RBD-KRS

Court: U.S. District Court for the Middle District of Florida, Orlando Division

Judge: Hon. Roy B. Dalton

Clients: Richard Ihrig, Lindquist & Vennum, P.L.L.P and Gina J. Paulucci

Nature of Participation: Co-counsel for the three listed clients

Dates of Case: August 2014 – August 2015

Co-counsel: Virginia Townes, [REDACTED]

Opposing Counsel: Anthony W. Palma, [REDACTED]
Todd K. Norman, [REDACTED]
Bernard Gentry, [REDACTED]
Joseph Frein, [REDACTED]

Counsel for Co-Defendants: T. Robert Bulloch, [REDACTED]
Keely Morton, [REDACTED]
Keith Hesse, [REDACTED]

Significance: This case shows my ability to understand complex jurisdictional issues. This case involved a trust with connections to three states: Minnesota, South Dakota and Florida. Two contingent beneficiaries of the trust filed a Complaint against the trustees and the primary beneficiary of the trust. The Complaint alleged that the trustees improperly changed the situs of the trust from Florida to South Dakota, which reduced the rights of the contingent beneficiaries. It was undisputed that a South Dakota court had previously entered a final judgment confirming that the situs of the trust was in South Dakota and that the trust was subject to supervision by the South Dakota court. The Plaintiffs sought a declaration that the change of situs was null and void and that the situs of the trust remained in Florida. The Plaintiffs also sought removal of the trustees, to avoid certain payments made from the trust to the trustees, and an award of damages from the trustees.

I was the primary drafter of the Defendants' Motion to Dismiss which argued that the Court lacked subject matter jurisdiction to hear the case based on a 1939 case from the U.S. Supreme Court, *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456 (1939). In that case, the Supreme Court held that a state court's exercise of jurisdiction over the administration of a trust deprives a federal court of subject matter jurisdiction over a later lawsuit brought by the beneficiaries of the trust asserting claims against the trustees for mismanagement of the trust. The Motion to Dismiss argued that the Plaintiffs' claims, including their claims for money damages and claims to remove the trustees, were *quasi in rem* claims that actually pertained to management of the trust and its corpus and that, therefore, the claims were subject to the *Princess Lida* Doctrine and the MDFL lacked jurisdiction. In the alternative, the Motion to Dismiss argued that certain of the Plaintiffs' claims were barred by the Full Faith & Credit clause of the U.S. Constitution, that the Court lacked personal jurisdiction over the Defendants, and that the Plaintiffs' Complaint failed to state a cause of action.

This case concerned very nuanced issues pertaining to jurisdiction. The Plaintiffs asserted that their claims were *in personam* and disputed that the *Princess Lida* Doctrine applied. After extensive briefing, the Court agreed that the Plaintiffs' claims were *quasi in rem* and that, therefore,

the *Princess Lida* Doctrine applied and mandated that the Court dismiss the Plaintiffs' claims. The decision is reported at *Selton v. U.S. Bank Trust Nat. Assn.*, 124 F.Supp.3d 1245 (M.D. Fla. 2015).

5. *Fabian Wade v. Kay Jewelers Inc., et al.*

Case No. 3:17-cv-990-MPS

Court: U.S. District Court for the District of Connecticut, New Haven Division

Judge: Hon. Michael P. Shea

Client: Sterling Jewelers, Inc.

Nature of Participation: Lead counsel for Sterling Jewelers Inc.

Dates of Case: May 2017 – May 2019

Co-counsel: Daniel I. Prywes, [REDACTED]
Colleen J. Velturo, [REDACTED]
Stephen P. Brown, [REDACTED]
Janice D. Lai, [REDACTED]

Opposing Counsel: Nitor V. Egbarin, [REDACTED]

Counsel for Co-Defendant: Dawn Neborsky, [REDACTED]

Counsel for
Third-Party Defendant: Lorinda S. Coon, [REDACTED]
Richard A. Roberts, [REDACTED]
Robert G. Clemente, [REDACTED]

Significance: This case is significant because it shows my understanding of the challenges faced by solo and small law firm practitioners, who make up a majority of the members of The Florida Bar. The Plaintiff in this case filed suit against two defendants asserting claims for violation of 42 U.S.C. § 1981, along with five state law tort claims. I began as lead counsel for one of the defendants, Sterling Jewelers Inc. (“Sterling Jewelers”), while I was practicing at Morris, Manning & Martin, LLP (“MMM”) in Washington, D.C. The case lasted approximately two years. Nine months into the case, in February 2018, I left MMM to start my own law firm in Florida. Sterling Jewelers chose to retain me as lead counsel. I handled this significant out of state litigation while also starting and running a new law firm with no other attorneys or staff. I conducted six out-of-state depositions requiring two trips out of state that all occurred while my new law firm was in its infancy. While running this litigation, I had to simultaneously handle all of the client and managerial responsibilities that come with starting and running a new law firm, including handling all matters for my other clients without sacrificing service to any client, missing any court deadlines or failing to meet any other professional responsibility. My personal experience overcoming the challenges of starting and running a small law firm while handling significant litigation will assist me as a member of the body that governs the members of The Florida Bar, a majority of whom practice in small law firms.

I ultimately achieved a successful result for my client in this case. I was the sole author of Sterling Jewelers’ Second Motion for Summary Judgment, which the Court granted in full. The

Court's order granting that motion is available at *Wade v. Kay Jewelers, Inc.*, 3:17-CV-990 (MPS), 2019 WL 1396179 (D. Conn. Mar. 27, 2019).

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

See attached the following:

(1) *Dubois v. State*, 6D23-185, 2023 WL 2721245 (Fla. 6th DCA Mar. 31, 2023)

(2) *Raducan v. State*, 6D23-453, 2023 WL 2335926 (Fla. 6th DCA Mar. 3, 2023)

(3) *Goodman v. Goodman*, 6D23-248, 2023 WL 2194586 (Fla. 6th DCA Feb. 24, 2023)

I personally wrote each of these opinions. As with all appellate opinions, I may have received input from other judges on the court.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

Governor DeSantis appointed me to the Florida Sixth District Court of Appeal for a term that began on January 1, 2023. I currently serve in that position.

Prior to my appointment to the District Court, Governor DeSantis appointed me to fill a vacancy on the Circuit Court of the Ninth Judicial Circuit. I served in that position from February 22, 2021 through December 31, 2022. I stood for election for a full term to the Circuit Court in 2022. At the close of qualifying on April 29, 2022, I was unopposed and, as a result, I was elected without opposition to a full six-year term.

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

I applied to the Ninth Circuit Judicial Nominating Commission in September 2018 and the Fifteenth Circuit Judicial Nominating Commission in July 2019. Neither commission certified my name to the Governor's office for consideration.

I applied to the Ninth Circuit Judicial Nominating Commission in January 2021 and the Commission certified my name to the Governor's office for consideration. The Governor appointed me to this vacancy.

I applied to the Fifth District Court of Appeal Judicial Nominating Commission in January 2021. I withdrew my name from consideration prior to the commission certifying names to the Governor due to my appointment to the Circuit Court of the Ninth Judicial Circuit.

I applied to the Sixth District Court of Appeal Judicial Nominating Commission in September 2022 and the Commission certified my name to the Governor's office for consideration. The Governor appointed me to this vacancy.

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

N/A

26. If you have prior judicial or quasi-judicial experience, please list the following information:

(i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;

Hon. Juna M. Pulayya
Ninth Circuit Court of Florida
425 N. Orange Ave.
Orlando, FL 32801

[REDACTED]

Debra L. Ferwerda, Esq.
Jacobson, Chmelir and Ferwerda
351 E. State Road 434, Ste. A
Winter Springs, FL 32708

[REDACTED]

Keersten Heskin Martinez, Esq.
Heskin Martinez Law Group
390 N. Orange Ave., Ste. 1550
Orlando, FL 32801

[REDACTED]

Nicole Park, Esq.
GrayRobinson, P.A.
301 E. Pine St., Ste. 1400
Orlando, FL 32801

[REDACTED]

Mark O'Mara, Esq.
O'Mara Law Group
221 N.E. Ivanhoe Blvd., Ste. 200
Orlando, FL 32804

[REDACTED]

Michele A. Lebron, Esq.
Lebron Law, PLLC
15 S. Orlando Ave.
Kissimmee, FL 34741

[REDACTED]

(ii) the approximate number and nature of the cases you handled during your tenure;

On the Sixth District Court of Appeal, I handle all manner of appeals and original proceedings that are filed in the District Court, including criminal, civil and family appeals, as well as petitions for extraordinary writs, such as petitions for writ of certiorari, writ of habeas corpus, writ of mandamus and writ of prohibition. During my time on the District Court, I

have served on panels that adjudicated 69 cases. Ten of those cases resulted in written opinions. Of the cases that resulted in written opinions, five opinions were authored by me and five were opinions authored by another judge in which I concurred.

During my service as a Circuit Judge from February 22, 2021 through December 31, 2022, between 2,500-2,750 family law cases were typically assigned to my division at any given time. The vast majority of cases are settled by the parties without trial, although many cases that resolve without trial require substantial evidentiary proceedings and discovery hearings before the parties reach a settlement. I presided over more than 40 non-jury trials and countless evidentiary hearings in family law proceedings. I also presided over one criminal jury trial.

(iii) the citations of any published opinions; and

1. *Dubois v. State*, 6D23-185, 2023 WL 2721245 (Fla. 6th DCA Mar. 31, 2023)
2. *Lax v. Marceno*, 6D23-1726, 2023 WL 2619523 (Fla. 6th DCA Mar. 24, 2023)
3. *Raducan v. State*, 6D23-453, 2023 WL 2335926 (Fla. 6th DCA Mar. 3, 2023)
4. *Goodman v. Goodman*, 6D23-248, 2023 WL 2194586 (Fla. 6th DCA Feb. 24, 2023)
5. *Edmonds v. Edmonds*, 6D23-97, 2023 WL 2053247 (Fla. 6th DCA Feb. 17, 2023)

(iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

(1) *Christine Marie Dubois v. State of Florida*

Case No. 6D23-185

Date of Opinion: March 31, 2023

Counsel for Appellant: Clark E. Green, [REDACTED]

Counsel for Appellee: Sonia C. Lawson, [REDACTED]

Nature of Case: Criminal Appeal

Description: Canon 3 of the Florida Code of Judicial Conduct limits a judge's ability to discuss a case outside of the judicial process. For this reason, out of an abundance of caution, I cannot provide a further description of this case other than my written judicial opinion. My opinion in this case is attached as a writing sample and is available at *Dubois v. State*, 6D23-185, 2023 WL 2721245 (Fla. 6th DCA Mar. 31, 2023). All other publicly available documents may be obtained from the Sixth District Court of Appeal eDCA online system.

(2) *Ionut Raducan v. State of Florida*

Case No. 6D23-453

Date of Opinion: March 3, 2023.

Counsel for Appellant: Michael B. Cohen, [REDACTED]

Counsel for Appellee: Jonathan S. Tannen, [REDACTED]

Nature of Case: Criminal Appeal

Description: Canon 3 of the Florida Code of Judicial Conduct limits a judge's ability to discuss a case outside of the judicial process. For this reason, out of an abundance of caution, I cannot provide a further description of this case other than my written judicial opinion. My opinion in this case is attached as a writing sample and is available at *Raducan v. State*, 6D23-453, 2023 WL 2335926 (Fla. 6th DCA Mar. 3, 2023). All other publicly available documents may be obtained from the Sixth District Court of Appeal eDCA online system.

(3) *Priscila Camargo v. Julio Augusto*

Case No. 2020-DR-6882-O

Dates of Case: Feb. 2021 – Nov. 2021

Counsel for Petitioner: Camy B. Schwam-Wilcox, [REDACTED]

Counsel for Respondent: P. Simone Freitas, [REDACTED]

Nature of Case: Annulment

Description: This case is significant because it required me to adjudicate complex issues of foreign law. Canon 3 of the Florida Code of Judicial Conduct limits a judge's ability to discuss a case outside of the judicial process. This is especially true in family law cases because such cases may be re-opened after the initial proceeding has concluded. For this reason, out of an abundance of caution, I cannot provide further information about this case. Publicly available documents may be obtained from the Orange County Clerk of Court.

(4) *Norma Suarez v. Juan Suarez*

Case No. 2002-DR-6215-O

Dates of Case: March 2021 – Sept. 2022

Counsel for Intervenor: Shon J. Douctre, [REDACTED]
Kenneth Gallagher, [REDACTED]

Counsel for Respondent: Megan M. Steinmetz, [REDACTED]

Nature of Case: Intervention by Adult Child to Collect Child Support Arrears

Description: This case is significant because it involved a disputed legal issue which had not been directly decided by any District Court of Appeal. Canon 3 of the Florida Code of Judicial Conduct limits a judge's ability to discuss a case outside of the judicial process. This is especially true in family law cases because such cases may be re-opened after the initial proceeding has concluded. For this reason, out of an abundance of caution, I cannot provide further information about this case. Publicly available documents may be obtained from the Orange County Clerk of Court.

(5) *State of Florida v. Shaka Dantuan Proctor*

Case No. 2022-CF-001039-O

Dates of Case: September 13, 2022 – September 15, 2022

Counsel for State: Wendy Gaskins, [REDACTED]

Counsel for Defendant: Peter Lee, [REDACTED]

Nature of Case: Aggravated Assault with a Deadly Weapon

Description: This case is significant because it demonstrates my proficiency with and knowledge of jury trials and criminal proceedings. I presided over all aspects of the trial from voir dire through the reading of the verdict and the discharge of the jury. I ruled on for-cause juror challenges, evidentiary issues and objections, disputes over jury instructions, and all other disputed issues in the trial. I conducted the trial successfully and provided a fair and lawful trial to both the State and the Defendant.

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

1. *Nelson v. Mirra*, 335 So. 3d 236 (Fla. 5th DCA 2022)

This case came before me on the Circuit Court on an emergency basis when the Petitioner/Mother filed an Emergency Verified Motion for Child Pick-Up Order. The Mother alleged that the Respondent/Father removed the parties' minor child from the Mother's custody and refused to return the child to her. The Parties were not married and the child was born out-of-wedlock. The Respondent was listed as the Father on the child's birth certificate and more than sixty days had passed since the birth certificate was issued. After I denied the motion, the Mother filed a Motion for Reconsideration. The Mother made two arguments: (1) The Father being listed on the minor child's birth certificate did not establish the Father's legal paternity as a matter of law and, therefore, the Mother was the only legal parent; and (2) The Mother was entitled to primary residential custody of the child under Section 744.301(1), *Florida Statutes*, which states in pertinent part:

The parents jointly are the natural guardians of their own children and of their adopted children, during minority... The mother of a child born out of wedlock is

the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court enters an order stating otherwise.

I denied the Motion for Reconsideration and found that: (1) pursuant to Section 742.10(4), *Florida Statutes*, because sixty days had passed since the Father's voluntary acknowledgment of paternity in the birth certificate, the voluntary acknowledgment of paternity constituted a legal establishment of paternity by the Father; and (2) the Father had an equal right to custody of the minor child along with the Mother.

The Fourth District Court of Appeal held in *Stewart v. Walker*, 5 So.3d 746, 749 (Fla. 4th DCA 2009), that "the last sentence [of Section 744.301(1)] applies only when there is no father who has declared his paternity and acted like a father to the child." Relying on a case from the Fifth DCA, the Fourth DCA held that "when an unwed father demonstrates and carries out the requisite settled purpose to be a father, he comes within the first sentence of the statute, making him a natural guardian along with the unwed mother." *Id* (quoting *State v. Earl*, 649 So.2d 297, 298 (Fla. 5th DCA 1995) (internal quotations omitted)). The Fourth DCA reversed a trial court that applied the last sentence of Section 744.301(1) to find that a Father of a child born out-of-wedlock was not a custodial parent of the child.

On appeal in *Nelson v. Mirra*, the Fifth DCA agreed with my holding that the Father's voluntary acknowledgment of paternity in the birth certificate established the Father's legal paternity. However, the Fifth DCA found that the Father's established legal paternity did not afford him custody rights without a prior court order granting custody rights, and that the last sentence of Section 744.301(1) granted the Mother primary residential custody over the Father. The Fifth DCA reversed my order on this basis and remanded the case with instructions to hold an evidentiary hearing on the Mother's emergency motion.

2. *Arroyo v. Garcia*, 339 So. 3d 1097 (Fla. 5th DCA 2022)

This case was a child support case in the Circuit Court primarily handled by the General Magistrate assigned to my division. My Order ratifying the Report and Recommendation of the General Magistrate was reversed by the Fifth DCA.

- 28.** Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

I have not yet had a case that called for a significant opinion on a federal or state constitutional issue.

- 29.** Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

Not to my knowledge.

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

No.

31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

I have been a District Judge on the Florida Sixth District Court of Appeal since January 1, 2023. Prior to that, I served as a Circuit Judge on the Ninth Circuit Court of Florida from February 22, 2021 through December 31, 2022. I was a candidate to retain my seat as a Circuit Judge in 2022. At the close of qualifying on April 29, 2022, I was unopposed and, as a result, I was elected without opposition.

NON-LEGAL BUSINESS INVOLVEMENT

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

Since being admitted to The Florida Bar, the only occupation or profession I have engaged in other than practicing law is serving in my prior position as a Circuit Judge and in my current position as a District Judge. From February 22, 2021 through June 30, 2022, my salary as a Circuit Judge was \$165,509.00 per year. From July 1, 2022 through December 31, 2022, my salary as a Circuit Judge was \$182,060.00 per year. Since January 1, 2023, my salary as a District Judge has been \$202,440.00 per year.

POSSIBLE BIAS OR PREJUDICE

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

There are no types or classifications of cases or litigants for which it would be difficult for me to sit as the presiding judge. I would handle every case impartially and treat all litigants fairly and equally. Since becoming a judge, I have not recused from a significant number of cases.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

None.

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

None.

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

“Advanced Alimony,” panel discussion at the Orange County Bar Association Bench Bar Conference, Orlando, Florida, April 8, 2022.

“Attorneys’ Fees and Costs in Family Law Cases: A View from the Family Law Bench of the Ninth Judicial Circuit,” CLE webinar presented by the Family Law Committee of the Orange County Bar Association, March 18, 2022.

Interviewed on “Legal Limit” Podcast, presented by the Orange County Bar Association. Interview recorded on March 10, 2022. Interview is unaired as of the date of this application.

Judicial panel discussion during online CLE seminar entitled “Master Class for Discovery,” presented by the Family Law Committee of the Orange County Bar Association, February 18, 2022.

Interviewed on “Open Ninth” Podcast, presented by the Ninth Circuit Court of Florida, December 13, 2021. Audio available at <https://ninthcircuit.org/openninth/judicial-spotlight-0>

Brief remarks and Q&A session at seminar entitled “The Ethics of Modern Family Formation Through Adoption,” sponsored by Barry School of Law Family Law Journal, Orlando, Florida Nov. 18, 2021.

Judicial Investiture, presented by the Ninth Circuit Court of Florida, Orlando, Florida, November 5, 2021. Video available at <https://9thnow.lightcast.com/player/23077/413820>

Interviewed on “Legal Morse of Action” Podcast, October 29, 2021. Video available at <https://www.youtube.com/watch?v=6f3BxsQeE2E>

“A Discussion of the Roles of Federal Versus State Judges,” panel discussion presented by the Orlando Chapter of the Federalist Society, Orlando, Florida, October 20, 2021.

Guest speaker in Family Law class taught by Judge Eric DuBois, Florida Agricultural and Mechanical University College of Law, Orlando, Florida, September 30, 2021.

“Meet the Judges,” online panel discussion presented by the Family Law Committee of the Orange County Bar Association, April 16, 2021.

“Practical Advice for Foreign Parties Facing Civil Litigation in the United States,” presented to Institute for U.S. Law, Washington, D.C., August 7, 2017.

“The Telephone Consumer Protection Act: What Every Counsel Should Know To Avoid Surprise Liability,” webinar sponsored by CELESQ AttorneysEd Center, February 16, 2017.

“The Telephone Consumer Protection Act (TCPA) in Practice: Overview of the FCC Omnibus Declaratory Ruling and Order,” webinar sponsored by the Florida Hospital Association, October 13, 2015.

Selected to interview Justice Clarence Thomas at Marshall M. Criser Distinguished Lecture, University of Florida College of Law, Gainesville, FL, February 4, 2010.

- 38.** Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

Guest speaker for a session of a Family Law class taught by Judge Eric DuBois, Florida Agricultural and Mechanical University College of Law, September 30, 2021.

Presented CLE entitled “Attorneys’ Fees and Costs in Family Law Cases: A View from the Family Law Bench of the Ninth Judicial Circuit”, which was a webinar presented by the Family Law Committee of the Orange County Bar Association, March 18, 2022.

- 39.** List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

Order of the Coif, University of Florida College of Law Chapter, Inducted Spring 2010

Book Award, Florida Constitutional Law, University of Florida College of Law, Spring 2009

Frank E. Maloney Award for Outstanding Candidate, Florida Law Review, Spring 2009

Honors in Appellate Advocacy, University of Florida College of Law, Spring 2008

Dean’s List (All semesters of law school)

Pro Bono Certificate, University of Florida College of Law

Florida Academic Scholar (Undergraduate at University of Florida)

Golden Key International Honor Society, Inducted Fall 2006

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

No.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

Federalist Society (Member, 2007 – Present)

Board Member, DC Young Lawyers Chapter, Federalist Society, June 2017 – Feb. 2018

President, University of Florida Chapter, Federalist Society, Fall 2008 – Spring 2010

American Bar Association (Member, Nov. 2010 – Aug. 2012)

Orange County Bar Association (Member, April 2012 – May 2015 & Dec. 2020 – Present)

Hillsborough County Bar Association (Member Nov. 2010 – June 2012)

Federal Bar Association (Member May 2012 – April 2017)

Republican National Lawyers Association (former member)

George C. Young American Inn of Court (Member, July 2021 – Present)

Central Florida Family Law Inn of Court (Member, April 2021 – Present)

Central Florida Association for Women Lawyers (Member, June 2021 – Present)

States Bars of Florida, Colorado, Texas, Virginia, West Virginia and Wyoming (See Exhibit A hereto)

Bar of the District of Columbia (See Exhibit A hereto)

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

University Club of Orlando (Member, March 2021 – January 2023)

Seminole County Gun and Archery Association (Member, August 2022 – December 2022)

National Rifle Association (Member, 2002 – March 7, 2021)

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

My most significant pro bono case as an attorney was representing the Washington D.C. area Goodwill affiliate in the lawsuit entitled *Davis Memorial Goodwill Industries v. Alaa Garada*, Case No. 1:17-cv-00347-TSE-JFA, in the U.S. District Court for the Eastern District of Virginia. I litigated this case on a pro bono basis from March through June 2017.

45. Please describe any hobbies or other vocational interests.

Hiking, Constitutional Law, Barbeque

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

I have never served in the military.

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

<https://www.linkedin.com/in/judgejoshfl>

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

I have been married to Eugenia Mize since January 21, 2012. My wife is Deputy General Counsel at Blue Ridge Power.

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

None.

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

No.

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

No.

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

No.

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No.

56. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, provide the particulars of each finding or investigation.

No.

57. To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please

state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No.

- 58.** Are you currently the subject of an investigation which could result in civil, administrative, or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation, and the expected completion date of the investigation.

No.

- 59.** Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

No.

- 60.** In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No.

- 61.** Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I have always complied with all legally required tax return filings. In 2012 and 2013, my wife and I paid estimated tax penalties of \$23 and \$15, respectively. These were the first two years that we were married and we slightly underestimated the withholding amounts for our joint income.

HEALTH

- 62.** Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No.

- 63.** During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

No.

64. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

No.

65. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No.

66. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, provide full details as to court, date, and circumstances.

No.

67. During the last ten years, have you unlawfully used controlled substances, narcotic drugs, or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal or State law provisions.)

No.

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action

No.

69. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal, and the reason why you refused to submit to such a test.

No.

70. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No.

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

My extensive experience as a trial judge, appellate judge and as an attorney practicing complex civil litigation have prepared me to be an excellent justice on the Florida Supreme Court.

I have deep knowledge of the trial process. I conducted numerous evidentiary proceedings as an attorney and presided over more than 40 trials and countless evidentiary proceedings as a trial judge. Many of the cases over which I presided involved complex issues such as The Hague Convention, issues of foreign law and the effect of foreign legal proceedings and foreign administrative actions in the State of Florida, medical conditions and disabilities, foreign assets and entities, complex business arrangements, and construction projects. The cases I litigated as an attorney likewise often involved complex and challenging subject matter, such as international cross-border business transactions, complex financial relationships, and intellectual property rights in computer code. From this experience, I understand the litigation process as it happens at the trial level. My in-depth and practical understanding of the trial process will assist me in making correct legal rulings on the Florida Supreme Court as well as in performing the Court's rule-making function.

I am also extremely well-prepared to sit on the body that governs the legal profession and The Florida Bar. A majority of the members of The Florida Bar practice in small firms. In addition to practicing in large law firms for more than seven years, I also practiced law as a solo practitioner for three years. My experience as a solo practitioner and personal knowledge of the unique challenges faced by small firms will assist me as a member of the body that governs the members of The Florida Bar.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

First and foremost, I understand that the rule of law is paramount to the American system of government. In order to uphold the rule of law, courts must follow and interpret the law as it is written. Judges must say what the law is – not what the judges believe the law should be. Laws, whether constitutional or statutory, derive their legitimacy from the democratic process that produced them. For this reason, courts should interpret constitutional provisions according to their text and the original public meaning of that text at the time that the provision was enacted. This is the proper way to interpret constitutional provisions because the text of the provision, based on the public's understanding of the meaning of that text at the time of ratification, is what was ratified by the people that enacted the provision. Similarly, statutes should be interpreted according to their text and the common meaning of that text at the time that the statute was passed. The text of the statute is what was enacted by the legislature pursuant to the constitutional process. If I am appointed as a justice on the Florida Supreme Court, I will never waiver from these principles. I will never allow my personal views to influence my application of the law. I will never engineer

an outcome to comport with my personal preferences. I will never make a decision out of a desire to be popular or to follow public opinion. Every decision I make will apply the law as it is written.

Second, my career reflects the intellectual rigor and work ethic necessary to serve as a justice on the Florida Supreme Court. As an attorney, I litigated numerous cases that involved large and complicated universes of facts and legal issues. As a Circuit Judge, I adeptly handled cases involving complex legal and factual issues and did so in the emotionally charged and fast-paced environment that family law cases often present. Now on the District Court, I have handled all manner of appeals and rendered opinions that faithfully applied the law to the facts of each case. I have a track record of successfully evaluating complicated and difficult cases to determine the key legal issues and resolve them correctly according to the law.

Lastly, I will bring consistent and steadfast dedication to my job as a justice on the Florida Supreme Court. I will work as hard as necessary to ensure that I apply the law correctly in every case. No matter how heavy the workload or how difficult the case, I will consider it my moral and ethical obligation to ensure that every decision I make is correct under the law.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

Jordan E. Pratt, Esq.
Senior Counsel, First Liberty Institute
1331 Pennsylvania Ave NW, Suite 1410
Washington, DC 20004

[Redacted]
[Redacted]

Hon. Diego Madrigal, III
Ninth Circuit Court of Florida
425 N. Orange Ave.
Orlando, FL 32801

[Redacted]
[Redacted]

Hon. Anne-Leigh Gaylord Moe
Circuit Court of the Thirteenth Judicial Circuit
800 E. Twiggs Street
Tampa, FL 33602

[Redacted]
[Redacted]

Hon. Eric J. Netcher
Circuit Court of the Ninth Judicial Circuit
2 Courthouse Sq.
Kissimmee, FL 34741

[Redacted]
[Redacted]

Hon. Michael J. Hooi
County Court of Hillsborough County, Florida
800 E. Twiggs Street
Tampa, FL 33602

[Redacted]
[Redacted]

Matthew Richardson, Esq.
Brown Rudnick, LLP
601 Thirteenth St. NW, Suite 600
Washington, D.C. 20005

[Redacted]
[Redacted]

Christine Pratt, Esq.
Counsel, First Liberty Institute
1331 Pennsylvania Ave NW, Suite 1410
Washington, DC 20004

[REDACTED]
[REDACTED]

T. Todd Pittenger, Esq.
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, FL 32802-3068

[REDACTED]
[REDACTED]

J. Carter Andersen, Esq.
Bush Ross, P.A.
1801 N. Highland Ave.
Tampa, FL 33602

[REDACTED]
[REDACTED]

Joseph H. Wheeler, Esq.
Senior Counsel, U.S. Capitol Police
400 N. Tampa St., Suite 3200
Tampa, FL 33602

[REDACTED]
[REDACTED]

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 13th day of April, 2023.

Joshua A. Mize

Printed Name



Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: \$0

	2022	2021	2020
Last Three Years:	\$0	\$16,325.72	\$410,378.73

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: \$0

	2022	2021	2020
Last Three Years:	\$0	\$14,039.00	\$290,504.81

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current Year-To-Date: \$61,410.00

	2022	2021	2020
Last Three Years:	\$184,401.68	\$124,069.69	0

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current Year-To-Date: \$61,410.00

	2022	2021	2020
Last Three Years:	\$184,401.68	\$124,069.69	0

5. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current Year-To-Date: \$54,923.00

	2022	2021	2020
Last Three Years:	\$170,061.68	\$124,069.69	0

My income from sources other than the practice of law was primarily my salary as a judge. For 2022 and 2023, my income from sources other than the practice of law also includes income from a rental property that my wife and I purchased in April 2022.

FORM 6
FULL AND PUBLIC
DISCLOSURE OF
FINANCIAL INTEREST

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of December 31, 2022 was \$1,101,304.63

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds \$1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is \$ 10,000.00

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
See Exhibit B	

PART C - LIABILITIES

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4):

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

FBC Mortgage, LLC, 189 South Orange Ave., Suite 970, Orlando, FL 32801	\$485,072.43
Wells Fargo, 429 Montgomery St., San Francisco, CA 94104	\$415,809.41

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

PART D - INCOME

You may **EITHER** (1) file a complete copy of your latest federal income tax return, including all W2's, schedules, and attachments, **OR** (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
 (if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

PRIMARY SOURCE OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
Florida Sixth District Court of Appeal	811 E. Main St., Lakeland, FL 33801	Annual salary of \$202,440.00
Investment Property	[REDACTED]	\$2,700.00 per month

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
None			

PART E - INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE

OATH

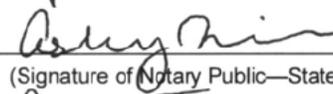
I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.


SIGNATURE

STATE OF FLORIDA

COUNTY OF Orange

Sworn to (or affirmed) and subscribed before me this 13 day of April, 2023 by Soshua A Mize


 (Signature of Notary Public—State of Florida)  Ashley Tomlinson
 State of Florida
 My Commission Expires 08/12/2023
 Commission No. GG 364834

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification X

Type of Identification Produced FL Drivers License

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: April 13, 2023

JNC Submitting To: Supreme Court of Florida

Name (please print): Joshua A. Mize

Current Occupation: Judge

Telephone Number: [REDACTED]

Attorney No.: 86163

Gender (check one): Male Female

Ethnic Origin (check one): White, non-Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Orange

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

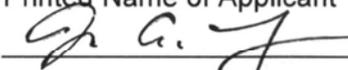
The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Joshua A. Mize

Printed Name of Applicant



Signature of Applicant

Date: April 13, 2023

Exhibit A - Joshua A. Mize – State Bar and Federal Court Admissions

<u>State or Federal Court</u>	<u>Date Admitted</u>	<u>Status</u>
Florida	10/05/2010	Active
District of Columbia	05/13/2016	Judicial
Virginia	09/14/2016	Associate
West Virginia	02/15/2017	Inactive
Texas	08/10/2017	Inactive
Wyoming	01/22/2018	Active
Colorado	06/06/2018	Inactive
U.S. Supreme Court	05/14/2018	Active
U.S. Court of Appeals for the Second Circuit	12/20/2010	Active
U.S. Court of Appeals for the Fourth Circuit	03/25/2020	Active
U.S. Court of Appeals for the Fifth Circuit	08/31/2020	Active
U.S. Court of Appeals for the Sixth Circuit	08/31/2020	Active
U.S. Court of Appeals for the Seventh Circuit	08/21/2020	Active
U.S. Court of Appeals for the Tenth Circuit	08/28/2020	Active
U.S. Court of Appeals for the Eleventh Circuit	04/08/2015	Active
U.S. District Court for the District of Columbia	07/11/2016	Active
U.S. District Court for the Middle District of Florida	12/03/2010	Active
U.S. District Court for the Southern District of Florida	04/05/2011	Active
U.S. District Court for the Northern District of Florida	03/09/2015	Active
U.S. District Court for the Northern District of Texas	09/05/2017	Active
U.S. District Court for the Western District of Texas	10/12/2017	Active
U.S. District Court for the Eastern District of Texas	02/04/2016	Active
U.S. District Court for the Southern District of Texas	09/06/2017	Active
U.S. District Court for the Eastern District of Virginia	10/21/2016	Active
U.S. District Court for the Western District of Virginia	12/08/2016	Active
U.S. District Court for the Southern District of West Virginia	02/15/2017	Active
U.S. District Court for the Northern District of West Virginia	05/22/2017	Active
U.S. District Court for the District of Colorado	02/05/2016	Active
U.S. District Court for the Northern District of Illinois	10/03/2016	Active
U.S. District Court for the Central District of Illinois	10/11/2017	Active
U.S. District Court for the Southern District of Illinois	03/01/2016	Active
U.S. District Court for the District of Nebraska	05/02/2016	Active
U.S. District Court for the Eastern District of Arkansas	11/11/2016	Active
U.S. District Court for the Western District of Arkansas	11/11/2016	Active
U.S. District Court for the District of Maryland	10/27/2017	Active
U.S. District Court for the District of Wyoming	04/04/2018	Active
U.S. District Court for the Western District of Michigan	07/23/2018	Active
U.S. District Court for the Eastern District of Michigan	08/08/2018	Active
U.S. District Court for the Western District of Wisconsin	07/31/2018	Active
U.S. District Court for the Eastern District of Wisconsin	08/06/2018	Active
U.S. District Court for the District of North Dakota	08/07/2018	Active
U.S. District Court for the Northern District of Indiana	09/06/2018	Active
U.S. District Court for the Southern District of Indiana	09/14/2018	Active
U.S. District Court for the District of Connecticut	09/10/2018	Active
U.S. District Court for the Eastern District of Oklahoma	12/21/2018	Active
U.S. District Court for the Western District of Oklahoma	6/14/2018	Active
U.S. District Court for the Northern District of Oklahoma	6/25/2018	Active
U.S. District Court for the District of New Mexico	05/16/2019	Active

<u>Exhibit B</u>	
Joshua Aaron Mize	
Itemization of Assets as of December 31, 2022	
<u>Assets</u>	<u>Value of Asset (as of December 31, 2022)</u>
Household Goods & Personal Effects	\$10,000.00
Primary Residence in Winter Park, FL	\$900,000.00
Rental Property in Orlando, FL	\$565,000.00
2018 Ford Explorer	\$17,500.00
2022 Tesla Model 3	\$42,000.00
Chase Checking Account	\$14,782.18
Chase Savings Account	\$2,718.79
Goldman Sachs Bank Account	\$38,604.54
Ally Bank Account	\$48,223.57
Capital One Bank Account	\$36,292.01
IRA at Chase - Containing as of 12/31/2022: (1) Cash of \$64,238.03; (2) 1,150 shares of AAAU (Gold ETF) at \$18.09 per share for a total value of \$20,803.50; (2) 934 shares of BAR (Gold ETF) at \$18.05 per share for a total value of \$16,858.70; and (3) 929 shares of GLDM (Gold ETF) at \$36.19 per share for a total value of \$33,620.51.	\$135,520.74
Chase Brokerage Account - Containing as of 12/31/2022: (1) 3,501 shares of GLDM (Gold ETF) at \$36.19 per share for a total value of \$126,701.19; (2) 1,054 shares of AAAU (Gold ETF) at \$18.09 per share for a total value of \$19,066.86; (3) 1,421 shares of BAR (Gold ETF) at \$18.05 per share for a total value of \$25,649.05; and (4) various index funds, each with a value of less than \$1,000.00.	\$173,455.27
Vanguard Large-Cap Stocks Index (VIX) in Florida Deferred Compensation Plan	\$26,871.84
Total Assets	\$2,010,968.94

Writing Samples

2023 WL 2721245

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District Court of Appeal of Florida, Sixth District.

Christine Marie DUBOIS, Appellant,

v.

STATE of Florida, Appellee.

Case No. 6D23-185

March 31, 2023

Appeal from the County Court for Lee County. [Tara P. Paluck](#), Judge. Lower Tribunal No. 21-MM-000240

Attorneys and Law Firms

Howard L. “Rex” Dimmig, II, Public Defender, and Clarke E. Green, Assistant Public Defender, Bartow, for Appellant.

[Ashley Moody](#), Attorney General, Tallahassee, and [Sonia C. Lawson](#), Assistant Attorney General, Tampa, for Appellee.

Opinion

MIZE, J.

*1 Appellant, Christine Dubois (“Dubois”), appeals her conviction following a jury trial for contracting without a license in violation of [section 489.127\(1\)\(f\), Florida Statutes \(2013\)](#).¹ She asserts that the trial court erred when it denied her motion for judgment of acquittal. We agree and reverse with instructions to the trial court to enter a judgment of acquittal.

¹ This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

Standard of Review

The standard of review for the denial of a motion for judgment of acquittal is de novo. [Delgado v. State](#), 71 So. 3d 54, 65 (Fla. 2011). “Generally, an appellate court will not reverse

a conviction which is supported by competent, substantial evidence.” *Id.* (quoting [Reynolds v. State](#), 934 So. 2d 1128, 1145 (Fla. 2006)). “There is sufficient evidence to sustain a conviction if, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt.” *Id.* (quoting [Johnston v. State](#), 863 So. 2d 271, 283 (Fla. 2003)). “In moving for a judgment of acquittal, a defendant admits not only the facts stated in the evidence adduced, but also admits every conclusion favorable to the adverse party that a jury might fairly and reasonably infer from the evidence.” *Id.* (quoting [Reynolds](#), 934 So. 2d at 1145 (internal quotations omitted)). However, “[u]nder this standard, the State is required to prove each and every element of the offense charged beyond a reasonable doubt, and when the State fails to meet this burden, the case should not be submitted to the jury, and a judgment of acquittal should be granted.” *Id.* (quoting [Baugh v. State](#), 961 So. 2d 198, 204 (Fla. 2007) (internal quotations, alterations omitted)).

Section 489.127(1)(f) - Contracting Without a License

[Section 489.127\(1\)\(f\), Florida Statutes](#), provides that “[n]o person shall...[e]ngage in the business or act in the capacity of a contractor...without being duly registered or certified.” [§ 489.127\(1\)\(f\), Fla. Stat. \(2013\)](#). A first-time violation of [section 489.127\(1\)\(f\)](#) is a first-degree misdemeanor. [§ 489.127\(2\)\(a\), Fla. Stat. \(2013\)](#).

Section 489.105(3) defines a contractor as follows:

“Contractor” means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described

in one of the paragraphs of this subsection.

§ 489.105(3), Fla. Stat. (2018). The following paragraphs of section 489.105(3) then provide definitions and “job scopes” for certain specific types of contractors, including general contractor, mechanical contractor, underground utility and excavation contractor, and specialty contractor.

*2 Thus, three requirements must be satisfied in order for a person to be a “contractor” for purposes of section 489.127(1)(f). First, the individual must “construct, repair, alter, remodel, add to, demolish, subtract from or improve” a building or structure for others or for resale to others, or undertake or submit a bid to do so. Second, the individual must engage in such conduct “for compensation.” Third, the individual who engages in such conduct must have a job scope that is “substantially similar” to one of the job scopes described in the paragraphs of section 489.105(3). The job scopes that were included in the jury instructions in this case are the job scopes for a general contractor, mechanical contractor, underground utility and excavation contractor, and specialty contractor. § 489.105(3)(a), (i), (n), (q), Fla. Stat. (2018).²

² Section 489.105(3) includes definitions for additional types of contractors that were not included in the jury instructions below and, therefore, are not at issue in this case. Section 489.103(12) provides an exemption to section 489.127 for “[a]ny person who only furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor.” § 489.103(12), Fla. Stat. (2019). Dubois did not raise the exemption in the lower court or in this appeal, and thus it is not at issue in this appeal.

The Trial Below

At the trial of this matter, the State failed to introduce evidence from which a rational trier of fact could have found beyond a reasonable doubt that Dubois constructed, repaired, altered, remodeled, added to, demolished, subtracted from or improved a building or structure, or that she undertook or submitted a bid to do any of these things. Because the State failed to meet its burden, the trial court should have granted Dubois’ motion for judgment of acquittal.

The State's allegation in this case was that Dubois engaged in contracting without a license by entering into a contract with Thomas Bohmer to install an electrical generator at Mr. Bohmer's home. Installing a generator at a person's home could constitute altering and/or adding to a building or structure, and therefore could satisfy the first element of section 489.127(1)(f), provided that the installation involved affixing the generator to the home or altering the home in some manner, as opposed to simply delivering the generator and plugging it into the home in a non-permanent manner. However, the State did not introduce evidence that Dubois contracted to install the generator at Mr. Bohmer's home, and certainly did not introduce evidence that she contracted to install the generator in such a manner that it would have altered or added to the home.³

³ Section 489.127(1)(f) requires that a party construct, repair, alter, remodel, add to, demolish, subtract from or improve *a building or structure*, or undertake or submit a bid to do so. Only “alter” or “add to” are relevant to this case. It is unclear whether installing a generator would fall within the language of the statute. Simply plugging a generator into a home, even if the generator itself requires substantial work or expertise to set up, may not constitute “adding to” or “altering” the home if the generator could simply be unplugged and removed from the home. On the other hand, affixing a generator permanently to the structure of a home would seem to clearly constitute “adding to” and “altering” the home. In this case, we need not decide what types of installation would satisfy the requirement that a defendant “alter” or “add to” a building or structure because the State did not introduce evidence that Dubois agreed to perform any type of installation with respect to the generator.

The State did not introduce the written contract between Dubois and Mr. Bohmer into evidence at the trial. The State did call Mr. Bohmer as a witness. Mr. Bohmer testified to the existence of a contract between himself and Dubois relating to a generator, but he did not testify to the terms of the contract and, specifically, he did not testify that the contract required Dubois to install the generator at his home. The relevant portion of Mr. Bohmer's testimony was as follows:

*3 Q: Mr. Bohmer, let's focus on the day of the incident here, the offense. June 24, 2020, could you tell us what happened on that day?

A: I had a meeting with Christine Dubois. And I was looking for a new generator. And, uh, she contacted me a few days before that to set up an appointment. She was recommended by a neighbor. And we met and talked about the generator. I had a price in mind and gave it to her and she said that she could meet that price.

...

Q: The defendant contacted you? Okay. And how did she contact you?

A: By phone.

Q: Okay. And what, what happened after?

A: Well, I think it was like on a Saturday and then we met just one day the following week. And, um, as I said, I had this price. A neighbor had this generator, uh, done for him, and I showed her what the price was, and she said she could do that.

Q: Okay. And so when she told you that she could do that, what was your reaction at that point?

A: I went ahead and we signed a contract.

The closest Mr. Bohmer came to stating the terms of the contract was his testimony that a neighbor had a generator “done for him” and that Dubois “said she could do that.” However, Mr. Bohmer never stated what was “done” with respect to the generator. He did not testify that what was “done” was the installation of the generator. He did not testify that whatever was “done” with respect to the generator involved adding to or altering a building or structure. Without testimony or evidence from which a jury could conclude that Dubois agreed to install the generator in a manner that added to or altered a building or structure, the State did not meet its burden to introduce competent, substantial evidence that Dubois entered into a contract to add to or alter a building or structure.

Mr. Bohmer also testified that Dubois “was supposed to...contact the Homeowners’ Association to get approval from them.” However, Mr. Bohmer did not testify to what approval Dubois was supposed to obtain from the Homeowners’ Association. He did not testify that Dubois

agreed to seek approval from the Homeowners’ Association for the installation of a generator on his property as opposed to simply the presence of a generator on his property. Even if Dubois had agreed to contact the Homeowners’ Association to get approval for the installation of a generator at Mr. Bohmer's property, that does not establish that Dubois also agreed to install the generator herself (as opposed to just seeking approval for Mr. Bohmer to install it). Such an agreement to contact the Homeowners’ Association certainly would not establish that Dubois contracted to install the generator in a manner that would have added to or altered Mr. Bohmer's home.

The State also offered the testimony of Lee County Sheriff's Detective Joshua Mied (“Detective Mied”). Detective Mied testified that: (1) he determined that Dubois was contracting without a license; (2) he requested and received Certificates of Non-Licensure from the Department of Business and Professional Regulation for Dubois herself and for three different company names that were either written in a contract between Dubois and Mr. Bohmer or on the outside of a folder in which Dubois kept paperwork; (3) Dubois admitted to Detective Mied that she did not have a license in the State of Florida; and (4) Dubois told Detective Mied that she was working under the license of another person, Phil, of a company called Lee Air. Detective Mied found the fourth point to be irrelevant since Dubois admitted that she was not working as an employee of Phil and, therefore, she could not operate under Phil's license.

*4 Absent from Detective Mied's testimony are the terms of the contract between Dubois and Mr. Bohmer. Detective Mied's conclusory statement that he determined Dubois was contracting without a license did not provide evidence of the terms of the contract between Dubois and Mr. Bohmer. Detective Mied testified that Dubois admitted that she did not have a license, but Dubois did not admit that she needed a license to perform her contract with Mr. Bohmer. Detective Mied did not testify that Dubois entered into a contract which required her to install the generator at Mr. Bohmer's home, much less that she contracted to install the generator in such a manner that would have “altered” or “added to” Mr. Bohmer's home.

Conclusion

In order to meet its burden at trial, the State was required to submit competent, substantial evidence that Dubois entered

into a contract to construct, repair, alter, remodel, add to, demolish, subtract from or improve a building or structure. The State failed to introduce any evidence whatsoever that Dubois entered into a contract to construct, repair, alter, remodel, add to, demolish, subtract from or improve a building or structure. For this reason, no rational trier of fact could have found the existence of all of the elements of a violation of [section 489.127\(1\)\(f\)](#) beyond a reasonable doubt. We reverse the trial court's denial of Dubois' motion for judgment of acquittal and remand this case to the trial court with instructions to enter a judgment of acquittal.

Because we determine that the State failed to submit competent, substantial evidence that Dubois entered into a contract to construct, repair, alter, remodel, add to, demolish,

subtract from or improve a building or structure, we need not decide whether there was sufficient evidence to establish the third prong of [section 489.127\(1\)\(f\)](#), i.e., whether Dubois' job scope was "substantially similar" to a job scope described in one of the paragraphs of [section 489.105\(3\)](#).

REVERSED and REMANDED.

[SASSO](#), C.J., and [COHEN](#), J., concur.

All Citations

--- So.3d ----, 2023 WL 2721245

2023 WL 2335926

District Court of Appeal of Florida, Sixth District.

Ionut RADUCAN, Appellant,

v.

STATE of Florida, Appellee.

Case No. 6D23-453

March 3, 2023

Synopsis

Background: Defendant was convicted upon his nolo contendere plea in the Circuit Court, 20th Judicial Circuit, Lee County, [Bruce E. Kyle, J.](#), to multiple felonies. Defendant appealed.

[Holding:] The District Court of Appeal, [Mize, J.](#), held that defendant was prohibited from pursuing direct appeal raising ineffective assistance of counsel claim.

Affirmed.

Procedural Posture(s): Appellate Review.

West Headnotes (2)

- [1] **Criminal Law** 🔑 Counsel for accused
Criminal Law 🔑 Preliminary proceedings;
indictment, information, or complaint

Defendant was prohibited from pursuing direct appeal of his conviction upon his nolo contendere plea to multiple felonies on basis that he received ineffective assistance of counsel; defendant did not assert on appeal that trial court committed fundamental error, and, even if defendant had asserted that ineffective assistance of counsel rose to level of fundamental error, defendant was still required to preserve error by filing motion to withdraw his plea to trial court, which he did not do. *U.S. Const. Amend. 6*; *Fla. Stat. Ann. §§ 924.06, 924.051(3), 924.051(4)*; *Fla. R. App. P. 9.140(b)(2)(A)(i), 9.140(b)(2)(A)(ii)*.

- [2] **Criminal Law** 🔑 Voluntary Character

Criminal Law 🔑 Preliminary proceedings;
indictment, information, or complaint

A nolo contendere plea entered into with ineffective assistance of counsel is an “involuntary plea” such that the defendant may pursue a direct appeal if preserved by a motion to withdraw the plea. *U.S. Const. Amend. 6*.

Appeal from the Circuit Court for Lee County. [Bruce E. Kyle, Judge](#). Lower Tribunal No. 21-CF-000657-E

Attorneys and Law Firms

[Michael B. Cohen](#), of Law Office of Michael B. Cohen, Fort Lauderdale, for Appellant.

[Ashley Moody](#), Attorney General, Tallahassee, and [Jonathan S. Tannen](#), Assistant Attorney General, Tampa, for Appellee.

Opinion

MIZE, J.

*1 Ionut Raducan (“Appellant”) appeals his convictions resulting from a nolo contendere plea to multiple felonies on the basis that his attorney was ineffective for failing to properly advise him regarding the immigration consequences of his plea.¹ We affirm.

¹ This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

In the trial court, Appellant entered into a plea agreement by which he agreed to plead “no contest” to all of the charges against him. Appellant did not reserve any matters for appeal except the legality of his sentence and the jurisdiction of the court. After accepting his plea, the trial court adjudicated him guilty and sentenced him to the minimum guideline sentences, with all sentences to be served concurrently.

In this direct appeal, Appellant raises a single claim of ineffective assistance of trial counsel. Specifically, Appellant argues that his trial counsel was ineffective because his counsel failed to advise him that he would be deported as

a result of his convictions. Appellant filed this direct appeal without filing a motion to withdraw his plea in the trial court.

[1] Section 924.051(3), Florida Statutes, provides that “[a]n appeal may not be taken from a judgment or order of a trial court unless a prejudicial error is alleged and is properly preserved or, if not properly preserved, would constitute fundamental error.” § 924.051(3), Fla. Stat. (2000). Applying this provision, the Florida Supreme Court has held that an unpreserved claim for ineffective assistance of counsel cannot be raised on direct appeal absent a showing of fundamental error. *Steiger v. State*, 328 So. 3d 926, 929 (Fla. 2021).

Additionally, Florida Rule of Appellate Procedure 9.140(b)(2)(A) sets forth the grounds upon which a defendant may appeal a conviction resulting from a nolo contendere plea. With certain exceptions, a defendant that pleads nolo contendere may not pursue a direct appeal of any issue except a prior dispositive order of the trial court for which the defendant expressly reserved the right to appeal. Fla. R. App. P. 9.140(b)(2)(A)(i); see also § 924.051(4), Fla. Stat. (2000) (“If a defendant pleads nolo contendere without expressly reserving the right to appeal a legally dispositive issue...the defendant may not appeal the judgment or sentence.”); § 924.06, Fla. Stat. (1998) (“A defendant...who pleads nolo contendere with no express reservation of the right to appeal a legally dispositive issue, shall have no right to a direct appeal.”).

One of the exceptions to this rule is “an involuntary plea, if preserved by a motion to withdraw plea.” Fla. R. App. P. 9.140(b)(2)(A)(ii); see also *State v. Dortch*, 317 So. 3d 1074, 1078 (Fla. 2021) (stating that rule 9.140(b)(2)(A)(ii)(c) “allows a defendant to appeal an involuntary plea, if preserved by a motion to withdraw plea.” (quoting Fla. R. App. P. 9.140(b)(2)(A)(ii) (internal quotations omitted))).

[2] A plea entered into with ineffective assistance of counsel is an involuntary plea. See *Hoskin v. State*, 341 So. 3d 443, 444 (Fla. 3d DCA 2022) (treating a plea that allegedly resulted from ineffective assistance of counsel as an involuntary plea under rule 9.140(b)(2)(A)(ii)(c)); *Hobbs v. State*, 790 So. 2d 1164, 1166 (Fla. 4th DCA 2001) (treating a plea that allegedly resulted from ineffective assistance of counsel as an involuntary plea).

*2 In this case, Appellant's ineffective assistance of counsel claim was not preserved in the trial court and Appellant does not assert that the trial court committed fundamental error. Therefore, pursuant to section 924.051(3), Florida Statutes, Appellant cannot pursue a direct appeal. *Steiger*, 328 So. 3d at 929.

Moreover, even if the Appellant had asserted that the ineffective assistance of counsel rose to the level of fundamental error, Appellant must still have preserved the error by filing a motion to withdraw the plea in the trial court in accordance with rule 9.140(b)(2)(A)(ii)(c). *Dortch*, 317 So. 3d at 1084 (holding that there is no fundamental error exception to the requirement of rule 9.140(b)(2)(A)(ii)(c) that a defendant preserve a claim of involuntary plea by filing a motion to withdraw the plea). For these reasons, we affirm.

AFFIRMED.

SASSO, C.J., and COHEN, J., concur.

All Citations

--- So.3d ----, 2023 WL 2335926, 48 Fla. L. Weekly D494

2023 WL 2194586

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District Court of Appeal of Florida, Sixth District.

Kimberly GOODMAN, Appellant,

v.

Sean GOODMAN, Appellee.

Case No. 6D23-248

February 24, 2023

Synopsis

Background: Wife filed petition for dissolution of marriage, determination as to custody of the parties' minor children, and determination as to support for those children. The Circuit Court, Lee County, [John S. Carlin, J.](#), entered dissolution order, distributed marital property, including stock options, determined child support obligations, and awarded wife durational alimony for a period of eight years. Wife appealed and husband cross-appealed. The District Court of Appeal, [Salario, J.](#), [231 So.3d 574](#), affirmed in part, reversed in part, and remanded. Wife petitioned state supreme court for review. The Supreme Court, [2018 WL 1410717](#), denied wife's petition. After remand, the Circuit Court, Lee County, [John S. Carlin, J.](#), entered second amended final judgment of dissolution. The District Court of Appeal, [310 So.3d 493](#), affirmed in part, reversed in part, and remanded. After second remand, the Circuit Court, 20th Judicial Circuit, Lee County, [John S. Carlin, J.](#), entered third amended final judgment of dissolution. Wife appealed.

Holdings: The District Court of Appeal, [Mize, J.](#), held that:

[1] portion of husband's annual bonus and annual stock options that were awarded to wife as a matter of temporary relief prior to trial could be treated as income and awarded as temporary alimony; but

[2] argument of wife that trial court erred by finding that certain funds awarded to her were improperly treated as both temporary alimony and part of her equitable distribution was not barred by doctrine of res judicata;

[3] portion of brokerage account of husband could not be awarded to wife both as temporary alimony and as part of equitable distribution; and

[4] third amended final judgment for marital dissolution was required to include findings regarding the parties' respective incomes, wife's need, and husband's ability to pay during the period for which retroactive alimony was awarded; but

[5] evidence supporting trial court's finding that wife had received funds from a trust as income was competent and substantial; but

[6] portion of brokerage account of husband could not be included in calculation of wife's net income for child support purposes.

Reversed and remanded.

Procedural Posture(s): On Appeal; Petition to Set Child Support; Petition for Custody; Petition for Divorce or Dissolution.

West Headnotes (8)

[1] **Divorce** 🔑 **Grounds, factors, and considerations**

Portion of husband's annual bonus and annual stock options that were awarded to wife as a matter of temporary relief prior to trial could be treated as income to former husband and paid to former wife as temporary alimony; annual bonus was income, and it was within trial court's discretion to treat husband's stock options as income, especially since husband received stock options each year on an annual basis.

[2] **Divorce** 🔑 **Support pending proceedings**

Wife's argument that trial court erred by finding that certain funds awarded to her as a matter of temporary relief prior to trial were temporary alimony, but then also awarding those funds to her in equitable distribution, was not barred by doctrine of res judicata, despite wife raising this argument in prior appeals, since issue was

within the scope of prior remand to consider and clarify any findings in regard to wife's request for retroactive alimony.

[3] **Divorce** 🔑 Separate wealth, estate and resources

Trial court has discretion to treat stock options as income rather than assets, for purposes of determining alimony in dissolution of marriage proceeding.

[4] **Divorce** 🔑 Grounds, factors, and considerations

Portion of brokerage account of husband in the amount of \$15,000, which had been awarded to wife as a matter of temporary relief prior to trial, could not be awarded to wife both as temporary alimony and as part of equitable distribution; trial court did not purport to make an unequal distribution of marital assets but instead found that this part of supposed equal distribution of marital estate was also temporary alimony paid by husband. *Fla. Stat. Ann.* § 61.075(1).

[5] **Divorce** 🔑 Award of Gross Sum

Lump sum alimony may be awarded in form of equitable distribution; in other words, trial court may give party greater share of distribution of marital assets as form of lump sum alimony, provided lump sum alimony is otherwise appropriate.

[6] **Divorce** 🔑 Determination and Findings

Third amended final judgment for marital dissolution was required to include findings regarding the parties' respective incomes, wife's need, and husband's ability to pay during the period for which retroactive alimony was awarded.

[7] **Child Support** 🔑 Weight and Sufficiency
Divorce 🔑 Income and assets

Evidence supporting trial court's finding that wife had received \$10,678 from a trust was competent and substantial, and thus such funds were properly imputed to wife as income for purposes of determining her net income in proceeding for marital dissolution, alimony, and child support.

[8] **Child Support** 🔑 Effect of Divorce, Dissolution of Marriage, or Annulment

Portion of brokerage account of husband in the amount of \$15,000, which had been awarded to wife as a matter of temporary relief prior to trial, and which was improperly awarded to wife both as temporary alimony and as part of purported equitable distribution, could not be included in calculation of wife's net income for child support purposes. *Fla. Stat. Ann.* § 61.30(2).

Appeal from the Circuit Court for Lee County. *John S. Carlin*, Judge. Lower Tribunal No. 13-DR-004771

Attorneys and Law Firms

Kimberly Goodman, Fort Myers, pro se.

Peter B. Sekulic and *Matthew P. Irwin*, of Men's Rights Law Firm, Cape Coral, for Appellee.

Opinion

MIZE, J.

*1 This is the third appeal arising from a dissolution of marriage proceeding between Appellant and former wife, Kimberly Goodman ("Former Wife"), and Appellee and former husband, Sean Goodman ("Former Husband").¹ Because the trial court failed to comply with the Second District Court of Appeal's opinion from the second appeal, we reverse.

¹ This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

Background and Prior Appeals

Former Wife filed a Petition for Dissolution of Marriage in 2013 seeking, among other things, alimony and child support. Former Husband responded with a Counter-Petition for Dissolution of Marriage. After entering orders requiring Former Husband to provide temporary support to Former Wife and the parties' children, the trial court held a trial in January 2015. After the trial, the trial court entered a Final Judgment of Dissolution of Marriage that, among other things: (1) imputed certain income to Former Wife; (2) found that Former Wife had a need of \$10,000 per month and that \$3,500 of that need could be met from other sources; and (3) awarded Former Wife durational alimony in the amount of \$6,500 per month for eight years.

Both parties appealed the original Final Judgment. In that appeal, Former Wife raised numerous issues related to the durational alimony award, including that the income imputed to her by the trial court was unsupported by record evidence. The Second District Court of Appeal issued an opinion in that appeal on October 13, 2017, which affirmed in part and reversed in part. *See Goodman v. Goodman*, 231 So. 3d 574 (Fla. 2d DCA 2017). That opinion stated in pertinent part:

While we find no error in the award of durational alimony or the imputation of income, there are related matters that the trial court should address on remand...Ms. Goodman is correct that to the extent she sought retroactive amounts [of alimony], the final judgment fails to make the findings required regarding need and ability to pay. *See* § 61.08(2), Fla. Stat. (2013). The trial court on remand should consider and clarify any findings in regard to her request for retroactive alimony for that time. *See Alpert v. Alpert*, 886 So. 2d 999, 1002 (Fla. 2d DCA 2004). This will also allow the trial court to consider Mr. Goodman's argument that his former wife's imputed income and trust income should be factored into any retroactive award. These issues will likewise bleed into the child support calculations, and we direct a similar determination of the issue of retroactive child support as well. *See* § 61.30.

...

In sum, we reverse the final judgment of dissolution to the extent expressed in this opinion...We remand for the additional proceedings described in this opinion. In all other respects, we affirm the final judgment of dissolution.

Id. at 577-78.

After the remand, on August 14, 2018, the trial court entered a Second Amended Final Judgment of Dissolution of Marriage (the "Second Amended Final Judgment"). Former Wife appealed the Second Amended Final Judgment. The Second District Court of Appeal entered an opinion in that appeal on December 9, 2020, which stated in full:

*2 [Former Wife] appeals from the second amended final judgment of dissolution, which the trial court entered on remand after a prior appeal. Our opinion in that prior appeal directed the trial court to, among other things, "consider and clarify any findings in regard to [Former Wife's] request for retroactive alimony" and for retroactive child support. *See Goodman v. Goodman*, 231 So. 3d 574, 577 (Fla. 2d DCA 2017). Because the court inadvertently failed to do so, we remand for the court to do so now. In all other respects, we affirm.

See Goodman v. Goodman, 310 So. 3d 493, 493 (Fla. 2d DCA 2020).

On December 23, 2021, the trial court entered a Third Amended Final Judgment of Dissolution of Marriage (the "Third Amended Final Judgment"). Despite the explicit instruction from the Second District Court of Appeal to the trial court, the Third Amended Final Judgment does not include findings regarding Former Wife's need and Former Husband's ability to pay during the period that the dissolution action was pending, i.e., from the time of the filing of Former Wife's Petition for Dissolution of Marriage through the date of the trial. Instead, for that retroactive period, the trial court simply required Former Husband to pay Former Wife the same monthly alimony amount (\$6,500) that the trial court found should apply prospectively based on the parties' financial positions as of the date of trial, without making any finding as to Former Wife's need or Former Husband's ability to pay during that retroactive time period. As to retroactive child support, the Third Amended Final Judgment likewise failed to make a finding regarding Former Husband's income during the retroactive period – and instead calculated retroactive child support using the income that the trial court found Former Husband earned as of the date of the trial.

The Instant Appeal

Former Wife appeals the Third Amended Final Judgment and the trial court's Order Denying Former Wife's Motion for Rehearing of the Third Amended Final Judgment. Former Wife raises three issues.

[1] [2] [3] First, Former Wife asserts that the trial court erred by finding that certain funds awarded to her as a matter of temporary relief prior to the trial were temporary alimony, but then also awarding those funds to her in equitable distribution.² Those funds were: (1) a share of Former Husband's annual bonus in the amount of \$16,900; (2) a share of Former Husband's annual stock options award in the amount of \$14,000; and (3) a portion of an Ameritrade brokerage account in the amount of \$15,000. As to the bonus and the stock options, Former Wife is incorrect that these amounts were awarded to her in equitable distribution. These amounts were treated as income to Former Husband and paid to Former Wife as temporary alimony. This was not improper. A trial court has discretion to treat stock options as income rather than assets. See *Seither v. Seither*, 779 So. 2d 331, 333-34 (Fla. 2d DCA 1999). Such treatment was especially appropriate here where Former Husband receives stock options every year on a recurring basis.

2 Former Husband argues that this argument is barred by the doctrine of *res judicata* because Former Wife raised this argument in her prior appeals. We reject Former Husband's argument because this issue was within the scope of the Second District Court of Appeal's remand to the trial court to "consider and clarify any findings in regard to [Former Wife's] request for retroactive alimony." See *Goodman*, 310 So. 3d at 493.

*3 [4] [5] As to the Ameritrade account, this account was a marital asset that was treated by the trial court as temporary alimony and also granted to Former Wife in equitable distribution. This was improper. Lump sum alimony may be awarded in the form of equitable distribution. In other words, a trial court may give a party a greater share of the distribution of marital assets as a form of lump sum alimony, provided lump sum alimony is otherwise appropriate. See *Pipitone v. Pipitone*, 23 So. 3d 131, 136 (Fla. 2d DCA 2009); see also *Kenney v. Goff*, 259 So. 3d 140, 146 (Fla. 4th DCA 2018); *Canakaris v. Canakaris*, 382 So. 2d 1197, 1201-03 (Fla. 1980) (holding that lump sum alimony and equitable distribution may be interrelated as part of one overall scheme). However, in this case, the trial court did not purport to make an unequal distribution of marital assets for

the purpose of awarding Former Wife lump sum alimony. Instead, the trial court purported to make an equal distribution of the parties' marital estate. And yet, the trial court found a part of the supposedly equal half of the marital estate received by Former Wife to also be temporary alimony paid to her by Former Husband. If the \$15,000 from the Ameritrade account was in fact temporary alimony paid by Former Husband to Former Wife, then this amount could not also be part of her equal half of the marital estate. If the \$15,000 was alimony instead of part of Former Wife's portion of the marital estate, then Former Wife actually received less than half of the marital estate, even though the trial court purported to order an equal distribution of the marital estate and did not make findings to support an unequal distribution of marital assets. See § 61.075(1), Fla. Stat. ("[T]he court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors."). For these reasons, the trial court erred by determining that the \$15,000 from the Ameritrade brokerage account was temporary alimony to Former Wife and also awarding this amount to Former Wife as part of an equal equitable distribution of marital assets.

Former Wife's second argument on appeal is that the trial court erred by failing to make a finding regarding Former Wife's need during the period when the dissolution was pending. Former Wife's third argument is that the trial court failed to calculate retroactive child support based on the party's net incomes during the period when the dissolution was pending. Specifically, as to Former Husband, Former Wife asserts that the trial court used Former Husband's current income as of the date of the trial, instead of making a finding and using Former Husband's actual income during the retroactive period. As to herself, Former Wife asserts that the trial court: (1) found she received income from a trust in the amount of \$10,678 without competent, substantial evidence to support the finding; and (2) improperly counted assets distributed to her in equitable distribution as income for purposes of determining her net income for child support purposes. Those assets were the same assets listed above: (1) a share of Former Husband's annual bonus in the amount of \$16,900; (2) a share of Former Husband's annual stock options award in the amount of \$14,000; and (3) a portion of an Ameritrade brokerage account in the amount of \$15,000.

[6] Former Wife's second and third arguments are interrelated and will be addressed together. Former Wife is correct that the Third Amended Final Judgment does not include findings regarding Former Wife's need and the

parties' respective net incomes during the period when the dissolution was pending. As stated above, the Second District Court of Appeal previously found that the trial court failed to make the required findings regarding need and ability to pay with respect to Former Wife's request for retroactive alimony and retroactive child support. The Second District Court of Appeal twice remanded this case to the trial court to make those findings. We now remand this case to the trial court a third time to make these findings. On remand, the trial court must make findings regarding the parties' respective incomes, Former Wife's need, and Former Husband's ability to pay during the period for which retroactive alimony is awarded. Retroactive child support must be revised to reflect these findings.

[7] As to Former Wife's argument regarding the trial court's finding concerning her trust income, there was competent, substantial evidence for the trial court's finding regarding this income.

[8] As to Former Wife's argument that the trial court improperly counted assets distributed to her in equitable distribution as income for purposes of determining her net income for the child support calculation, the bonus and

stock options were not awarded to Former Wife in equitable distribution. As stated above, these items were treated as income to Former Husband and awarded to Former Wife as temporary alimony. As to the \$15,000 from the Ameritrade brokerage account, as detailed above, Former Wife is correct that this was an asset awarded to Former Wife in equitable distribution. Therefore, the trial court erred by including these funds in the calculation of Former Wife's income for child support purposes. *See* § 61.30(2), Fla. Stat. (listing items that may be treated as income for purposes of calculating child support).

*4 For the reasons stated herein, we reverse the Third Amended Final Judgment and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

COHEN and NARDELLA, JJ., concur.

All Citations

--- So.3d ----, 2023 WL 2194586, 48 Fla. L. Weekly D437